Supreme Court, U.S.
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No. 95-605

In The

Supreme Court of the United States

October Term, 1995

OKLAHOMA ASSOCIATION FOR EQUITABLE TAXATION,

Petitioner,

v.

THE CITY OF OKLAHOMA CITY, OKLAHOMA,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Oklahoma

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Court below was correct in rejecting Petitioner's assertion that the age-based classification is suspect and subject to heightened scrutiny under the Equal Protection Clause.

2. Whether the Court below was correct in deciding the MAPS Refund Provision is rationally related to a legitimate governmental purpose.

3. Whether the age-based classification in this case is a denial of equal protection as vote dilution.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

REASONS WHY THE WRIT SHOULD BE DENIED .. 2

ARGUMENT 3

I. IT IS WELL SETTLED THAT THE RATIONAL BASIS TEST IS THE APPROPRIATE LEVEL OF SCRUTINY TO BE APPLIED TO AN AGE-BASED CLASSIFICATION UNDER THE EQUAL PROTECTION CLAUSE 3

II. THE MAPS REFUND PROVISION IS RATIONALLY RELATED TO A LEGITIMATE GOVERNMENTAL PURPOSE 5

A. *Petitioner Failed To Meet Its Burden To Show The MAPS Refund Provision Is Not Rationally Related To Any Legitimate Governmental Purpose* 5

B. *Legislative Classifications Pertaining To Taxing Statutes Are Given Great Latitude* .. 6

C. *The MAPS Refund Age-Based Classification Is A Reasonable Means To Promote A Legitimate Legislative Objective* 8

III. THIS CASE DOES NOT INVOLVE VOTE DILUTION 10

CONCLUSION 12

TABLE OF AUTHORITIES

Page

CASES

Acevedo v. Nassau County, New York, 500 F.2d 1078 (2d Cir. 1974) 10

Chapman v. City of Detroit, 808 F.2d 459 (6th Cir. 1986) 10

Doran v. Cullerton, 51 Ill.2d 553, 283 N.E.2d 865 (1972) 6

Exxon Corp. v. Eagerton, 462 U.S. 176, *on remand, Eagerton v. Exchange Oil and Gas Corp.*, 440 So.2d 1031 (Ala. 1983) 7

Gray v. Sanders, 372 U.S. 368 (1963) 10

Gregory v. Ashcroft, 501 U.S. 452 (1991) 3, 4, 5, 9

Hatten v. Rains, 854 F.2d 687 (5th Cir. 1988) 10

Hess v. St. Joseph Police Pension Fund, 788 F.2d 1344 (8th Cir. 1986) 10

Izquierdo Prieto v. Mercado Rosa, 894 F.2d 467 (1st Cir. 1990) 10

Jefferson v. Hackney, 406 U.S. 535, *rehearing denied*, 409 U.S. 898 (1972) 9

Malmed v. Thornburgh, 621 F.2d 565 (3d Cir. 1980), *cert. denied*, 449 U.S. 955 (1980) 10

Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976) 4

Miller v. Johnson, ___ U.S. ___, 115 S.Ct. 2475 (1995) 10

Nordlinger v. Hahn, 505 U.S. 1, 112 S.Ct. 2326 (1992) 3, 6, 7, 8

TABLE OF AUTHORITIES – Continued

Page

Oklahoma Association for Equitable Taxation v. The City of Oklahoma City, 901 P.2d 800 (1995)..... 1, 2, 6

Reynolds v. Sims, 377 U.S. 533 (1964) 10, 11

Shaw v. State of Or. Public Employees' Retirement Bd., 887 F.2d 947 (9th Cir. 1989) 10

State ex rel. v. Morgan, 30 Wis.2d 1, 139 N.W.2d 585 (1966) 6

Thompson v. Walker, 758 F.2d 1004 (4th Cir. 1985) 10

Thornburg v. Gingles, 478 U.S. 30 (1985) 10, 11

Vance v. Bradley, 440 U.S. 93 (1979)..... 6

Ware v. Idaho State Tax Commission, 98 Idaho 447, 567 P.2d 423 (1977), *modified on other grounds, Parsons v. Idaho State Tax Com'n*, 716 P.2d 1344 (Idaho Ct. App. 1986) 6

Wesberry v. Sanders, 376 U.S. 1 (1964) 10

STATEMENT OF THE CASE

This case is about a single provision of the MAPS Ordinance proposed by the Oklahoma City Council on October 13, 1993, and approved by the voters in a city-wide special election on December 14, 1993. The MAPS Ordinance amended the Oklahoma City tax code by levying an additional one percent excise tax for five years on all taxable sales made within Oklahoma City. The funds raised by the five-year tax are to be placed in a special account and used on a pay-as-you-go basis to erect new facilities and renovate existing public buildings in downtown Oklahoma City.

The section of the MAPS Ordinance at issue is the MAPS Refund Provision. It grants to Oklahoma City residents, who are sixty-five years and older, the right to an annual refund of all or part of the MAPS one percent sales tax actually paid by them, up to $32 per person. (Opinion below, Petition App. A-6 and A-7; now published at *Oklahoma Association for Equitable Taxation v. The City of Oklahoma City*, 901 P.2d 800, 802 (1995)).

Petitioner's Statement of the Case, with some clarification, accurately reflects the proceedings below. (Petition 3 through 6.) Accordingly, Respondent adopts Petitioner's statement as to the course of the proceedings and disposition of the case below, and adopts the remaining Statement of the Case with the following exceptions:

1. Petitioner's substitution of the pejorative term "rebate" for "refund" throughout its Petition is an invention of the Petitioner. "Rebate" was neither used in Ordinance No. 20,045, which established the MAPS Refund Provision (Petition App. B), nor was "rebate" used in the

Supreme Court of the State of Oklahoma's opinion. *See Oklahoma Association for Equitable Taxation v. The City of Oklahoma City*, 901 P.2d 800 (Okla. 1995).

2. In its argument, Petitioner states:

> "No longer are senior citizens the least well off in society. In fact, by some estimates sixty percent (60%) of the wealth in the United States is held by individuals over the age of sixty-five (65)."

That statement, characterized as a fact, was neither raised in the proceedings below nor is it relevant. It is purposefully misleading to the Court. In fact, in Oklahoma City, according to the 1990 United States Census, the median income for households headed by householders age sixty-five and over was $7,888, whereas the median income for households headed by householders under sixty-five years old was $27,958. (Median income calculated from 1990 United States Census data for household income by age of householders.)

REASONS WHY THE WRIT SHOULD BE DENIED

The Oklahoma Supreme Court's decision is consistent with decisions of other state courts, United States courts of appeals, and with decisions of this Court.

ARGUMENT

Petitioner asks this Court to hear this case for three reasons. First, it contends that a heightened level of scrutiny should be applied to the MAPS Refund Provision. Second, Petitioner contends that the Oklahoma Supreme Court's decision is not in accord with prior decisions of this Court and the United States courts of appeals because no legitimate governmental interest is served by the MAPS refund program. Third, Petitioner claims that this case involves "purposeful dilution of a particular group's voting strength," (petition 21).

I. IT IS WELL SETTLED THAT THE REASONABLE BASIS TEST IS THE APPROPRIATE LEVEL OF SCRUTINY TO BE APPLIED TO AN AGE-BASED CLASSIFICATION UNDER THE EQUAL PROTECTION CLAUSE.

The question here is whether the decision of the citizens of Oklahoma City to vote for an additional one cent sales tax for five years, which includes a limited refund of paid sales taxes to citizens sixty-five years old or older, violates the Equal Protection Clause. Petitioner claims that age-based classification should be subject to strict or heightened scrutiny because times have changed, and implies that the Court has not addressed this issue in the last twenty-five years.

That implication is not true; age-based classification was an issue in *Nordlinger v. Hahn*, 505 U.S. 1, 112 S.Ct. 2326 (1992) and in *Gregory v. Ashcroft*, 501 U.S. 452 (1991). In *Gregory*, the constitutional question raised was whether Missouri's constitutional provision requiring

appointed judges (other than municipal judges) to retire at the age of seventy years violated the Equal Protection Clause. The petitioners in *Gregory* claimed that the mandatory retirement provision created irrational distinctions between seventy-year-old judges and younger judges. The Court in *Gregory* stated:

> "Petitioners are correct to assert their challenge at the level of rational basis. This Court has said repeatedly that age is not a suspect classification under the equal protection clause. Nor do petitioners claim that they have a fundamental interest in serving as judges. The State need therefore assert only a rational basis for its age classification."

Id. at 470 (citations omitted).

The Court has consistently declined to extend heightened review to differential treatment based on age. The Court's rationale has been that the aged have not experienced a " 'history of purposeful unequal treatment' or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities," as have people discriminated against because of race, alienage, or national origin. *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 313 (1976).

In *Gregory*, as in this case, the challenged age-based classification is not merely the act of the legislature, but "reflects both the considered judgment of the . . . legislature that proposed it and that of the citizens . . . who voted for it." *Gregory, supra* at 441.

The Court concluded:

> "[W]e will not overturn such a [law] unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the [people's] actions were irrational."

Gregory, supra at 471, *quoting Vance v. Bradley*, 440 U.S. 93, 97 (1979).

II. THE MAPS REFUND PROVISION IS RATIONALLY RELATED TO A LEGITIMATE GOVERNMENTAL PURPOSE.

The MAPS Ordinance is a matter of strictly local concern. The MAPS Refund Provision of that ordinance reflects both the considered judgment of the Oklahoma City Council who proposed it and that of the residents of Oklahoma City who voted in favor of it. The MAPS Refund Provision neither burdens a suspect group nor a fundamental interest. "[C]ourts are quite reluctant to overturn governmental action on the ground that it denies equal protection of the laws." *Gregory, supra* at 471.

A. Petitioner Failed to Meet Its Burden To Show The MAPS Refund Provision Is Not Rationally Related To Any Legitimate Governmental Purpose.

Petitioner asserts that Respondent City has failed to prove that the age-based classification in the MAPS Refund Provision is reasonably related to a legitimate governmental purpose. Petitioner has it backwards:

> "In an equal protection case of this type, however, those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker."

Vance v. Bradley, 440 U.S. 93, 111 (1979) (citations omitted).

As the Oklahoma Supreme Court recognized, Petitioner failed to meet its burden. *See Oklahoma Association for Equitable Taxation v. City of Oklahoma City*, 901 P.2d 800 (Okla. 1995). The Oklahoma Supreme Court concurred with the holdings in other states which acknowledge that state and local taxing policies that favor senior citizens with refunds and exemptions are legitimate humanitarian and economic bases for age-based classification. *See Oklahoma Association for Equitable Taxation v. City of Oklahoma City, supra; Ware v. Idaho State Tax Commission*, 98 Idaho 447, 567 P.2d 423, 426 (1977), *modified on other grounds, Parsons v. Idaho State Tax Com'n*, 716 P.2d 1344, 1347 (Idaho Ct. App. 1986); *State ex rel. v. Morgan*, 30 Wis.2d 1, 139 N.W.2d 585, 587 (1966); and *Doran v. Cullerton*, 51 Ill.2d 553, 283 N.E.2d 865, 867-68 (1972).

B. Legislative Classifications Pertaining To Taxing Statutes Are Given Great Latitude.

As a general rule, legislation is presumed valid and will be sustained if a classification created by statute is rationally related to a legitimate governmental interest, despite the fact that, in practice, legislation may result in some inequality. *Nordlinger v. Hahn*, 505 U.S. 1, 112 S.Ct. 2326 (1992). "This standard is especially deferential in the

context of classification made in complex tax laws." *Id.*, 112 S.Ct. at 2332. In taxing measures, "[l]egislatures have especially broad latitude in creating classifications and distinctions." *Exxon Corp. v. Eagerton*, 462 U.S. 176, 196 (1983), *on remand, Eagerton v. Exchange Oil and Gas Corp.*, 440 So.2d 1031 (Ala. 1983), *quoting Regan v. Taxation with Representation in Washington*, 461 U.S. 540, 547 (1983). *See also Nordlinger v. Hahn, supra*, 112 S.Ct. at 2332.

The MAPS Refund Provision is part of a taxing policy of the City of Oklahoma City. The limited refund was designed to provide tax relief to City residents who are sixty-five and older. It was not irrational for the City Council to believe that: (1) senior citizens would be less able to pay the MAPS sales tax; and (2) senior citizens would be less likely to use the facilities built by the MAPS tax increase.

> "For purposes of rational-basis review, the 'latitude of discretion is notably wide in . . . the granting of partial or total exemptions upon grounds of policy.' "

Nordlinger v. Hahn, supra, 112 S.Ct. at 2335, *quoting F.S. Royster Guano Co. v. Commonwealth of Virginia*, 253 U.S. 412, 415 (1920).

The Court has long recognized that state and local governmental taxing policies may be designed to serve more purposes than merely raising revenue. For that reason, courts have shown great deference to legislative taxing policies.

> "The Equal Protection Clause does not forbid classifications. It simply keeps governmental

> decisionmakers from treating differently persons who are in all relevant respects alike."

Nordlinger v. Hahn, supra at 2331 (citation omitted).

> "[I]n structuring internal taxation schemes, 'the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.' "

Nordlinger v. Hahn, supra at 2332, *quoting Williams v. Vermont*, 472 U.S. 14, 22 (1985), *appeal after remand, Williams v. State*, 156 Vt. 42, 589 A.2d 840 (1990), *cert. denied, Williams v. Vermont*, 502 U.S. 821 (1991), *cert. denied, Woodard v. Vermont*, 502 U.S. 984 (1991).

C. The MAPS Refund Age-Based Classification Is A Reasonable Means To Promote A Legitimate Legislative Objective.

An age-based classification, approved by the citizens of Oklahoma City, allows senior citizens to receive a limited refund of sales taxes they have paid. Age-based classifications in state tax law were subjected to an equal protection analysis by this Court in the recent case of *Nordlinger v. Hahn*, 505 U.S. 1, 112 S.Ct. 2326 (1992). In that case, the people of California, in a statewide vote, approved an acquisition-value taxation scheme that provided an exemption from reassessment for two special classes of new owners, one of which was persons aged 55 and older. This Court held in *Nordlinger* that the exemption rationally furthered legitimate purposes. The Court stated that:

> "The people of California reasonably could have concluded that older persons in general should not be discouraged from exchanging their residences for ones more suitable to their changing family size or incomes."

Id., 112 S.Ct. at 2335.

In *Jefferson v. Hackney*, 406 U.S. 535, 549 (1972), *rehearing denied*, 409 U.S. 898 (1972), Texas allocated a higher proportion of available AFDC funds to the aged. There the Court stated:

> [T]he State may have concluded that the aged and infirm are the least able of the categorical grant recipients to bear the hardships of an inadequate standard of living. While different policy judgments are of course possible, it is not irrational for the State to believe that the young are more adaptable than the . . . elderly, especially because the latter have less hope of improving their situation in the years remaining to them. Whether or not one agrees with this state determination, there is nothing in the Constitution that forbids it.

Id. at 549.

This Court has recognized that age-based classification, "like all legal classifications, is founded on a generalization." *Gregory, supra* at 473. Such a generalization may be true, partially true, or not true at all. However, equal protection is not denied "merely because the classifications made . . . are imperfect." *Jefferson v. Hackney, supra* at 546.

The decision of the Oklahoma Supreme Court is consistent with the prior decisions of this Court and the

decisions of federal courts of appeals regarding the application of an equal protection analysis to age-based classification. *See Izquierdo Prieto v. Mercado Rosa*, 894 F.2d 467 (1st Cir. 1990); *Acevedo v. Nassau County, New York*, 500 F.2d 1078 (2d Cir. 1974); *Malmed v. Thornburgh*, 621 F.2d 565 (3d Cir. 1980), *cert. denied*, 449 U.S. 955 (1980); *Thompson v. Walker*, 758 F.2d 1004 (4th Cir. 1985); *Hatten v. Rains*, 854 F.2d 687 (5th Cir. 1988); *Chapman v. City of Detroit*, 808 F.2d 459 (6th Cir. 1986); *Hess v. St. Joseph Police Pension Fund*, 788 F.2d 1344 (8th Cir. 1986); *Shaw v. State of Or. Public Employees' Retirement Bd.*, 887 F.2d 947 (9th Cir. 1989). In each of the foregoing cases, an age-based classification was found to be rationally related to a legitimate governmental purpose.

III. THIS CASE DOES NOT INVOLVE VOTE DILUTION.

> "[A] vote dilution claim alleges that the State has enacted a particular voting scheme as a purposeful device 'to minimize or cancel out the voting potential of racial or ethnic minorities.' *Mobile v. Bolden*, 446 U.S. 55, 66, 100 S.Ct. 1490, 1499, 64 L.Ed.2d 47 (1990)."

Miller v. Johnson, ___ U.S. ___, 115 S.Ct. 2475, 2485 (1995).

Vote dilution has been addressed by this Court on numerous occasions, *e.g. Gray v. Sanders*, 372 U.S. 368 (1963); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Thornburg v. Gingles*, 478 U.S. 30 (1985). In virtually all these cases, the issue of vote dilution involved either unequal population

apportionment or redistricting schemes that split voting blocs. In each case, the issue was analyzed in terms of political equality requiring "one person, one vote." *Reynolds v. Sims, supra* at 557.

> "The phrase 'vote dilution,' in the legal sense, simply refers to the impermissible discriminatory effect that a multimember or other districting plan has when it operates 'to cancel out or minimize the voting strength of racial groups.' "

Thornburg v. Gingles, supra at 87, (O'Connor, J., concurring in the judgment), *quoting White v. Regester*, 412 U.S. 755, 765 (1973).

The MAPS Ordinance was put to the vote of the people of Oklahoma City in a city-wide election. Petitioner has never alleged, and has no basis to claim, that the vote of a senior citizen counted more than the vote of a non-senior citizen.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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